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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/629,749 07/31/00 MAPLES

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EXAMINER

TM31/1018

DURHAM RUSSELL MAPLES  
1507 PARK CIRCLE  
CAMDEN SC 29020

ELISCA.F

ART UNIT

PAPER NUMBER

2161

DATE MAILED:

10/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/629,749**

Applicant(s)  
**Durham R. Maples**

Examiner  
**Pierre E. Elisca**

Group Art Unit  
**2161**



☒ Responsive to communication(s) filed on Jul 13, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 17-26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 17-26 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2161

**DETAILED ACTION**

***Response to Amendment***

1. This Office action is in response to Applicant's amendment filed on 7/13/2001.
2. Claims 11-16 are canceled and claims 17-26 are added.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 17-26 are rejected under 35 U.S.C. 112 second paragraph because a single claim which claims both an apparatus and the method steps of using the apparatus is indefinite. See, In Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990), in which a claim directed to an automatic transmission workstand and the method steps of using it was held to be ambiguous and properly rejected under 35 U.S.C. 112, second paragraph.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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6. Claims 17-26 are rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a "process" nor a "machine", but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only.

*Response to Arguments*

7. Applicant's arguments filed On 7/13/2001 have been considered but are moot in view of the new ground(s) of rejection. Necessitated by amendment.

*Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication from the examiner should be directed to Pierre Eddy Elisca at (703) 305-3987. The examiner can normally be reached on Monday, Tuesday and Wednesday from 5:30AM. to 6:00PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9769.

**Any response to this action should be mailed to:**

Commissioner of patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

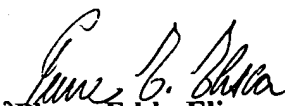
(703) 308-9051, (for formal communications intended for entry )

**OR:**

(703) 305-3718 ( for informal or draft communications, please label

"PROPOSED" or" DRAFT")


Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth floor (receptionist ).

  
Pierre Eddy Elisca

Art Unit 2161

Patent Examiner

September 18, 2001

  
JAMES P. TRAMMELL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100